

US Application Ser. No. 10/619,721  
Amendment dated September 29, 2008  
Reply to Office Action of June 27, 2008

## REMARKS

Claims 1-52 are pending in the instant application. Of these, claims 14, 18, 32, 36 and 41-46 are withdrawn. Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are under consideration, and stand rejected as final. Applicant respectfully requests reconsideration in view of the following remarks.

To briefly review, the present invention is directed to a medical device that fixes in place one or more tissues (such as bone) of a living body. The device, although porous, is sufficiently rigid as to prevent the fixed tissues from shifting during the healing process. It is desirable to be able to contour or shape the device to some desired conformation, and to be able to hold or maintain that new shape. Accordingly, at least a portion of the pores are designed to at least partially but irreversibly collapse during the shaping process. In doing so, the device will not crack or fail catastrophically, but instead can be smoothly bent, as a radius curve will form at the bend. Among the advantages of the claimed "pore collapsing technique" is the ability to deform the device to the desired shape at room temperature. Many prior art devices require heating above the polymer's glass transition temperature to be able to permanently deform the polymer material to some desired shape.

### Claim Rejections – 35 USC §102

Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are rejected under 35 U.S.C. §102(b) as being anticipated by European Patent Publication No. EP 0 562 864 A1 to Rosenthal (hereinafter referred to as "Rosenthal"). Applicant respectfully traverses this rejection.

The Examiner's position expressed in the Action is as follows:

The (Rosenthal) material is at least capable of maintaining a curved configuration upon removal of a bending force. For example, a bending force could be applied, the material could be frozen and, the force could be removed, and the material would maintain a curved configuration upon removal of the bending force. This interpretation is considered to be reasonable since some of Applicant's own arguments and claims are directed to the temperature at which the desirable properties are achieved. It is further noted that the freezing temperatures are below the glass transition temperature of the material.

In response to this position, Applicant presents the following rebuttal.

The Examiner's proposal regarding modification of the Rosenthal material is nothing more than a recitation of what Applicant discusses as prior art, except in a different temperature range. See, for example, the discussion of U.S. Patent Nos. 5,290,281 and 6,332,884 on page 6, U.S. Patent No. 6,203,573 on pages 7 and 8, and U.S. Patent No. 5,948,020 on page 11. In other words, what the prior art and the modified Rosenthal treatment share in common is a process of providing the device in a temperature state that is above its glass transition temperature, heating it if necessary to

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bring it to this temperature condition, then bending or molding the device while it is above glass transition, and then cooling the device to a temperature below the glass transition temperature. In contrast, the claimed invention avoids all of this need for temperature manipulation. The claimed device is bent, and it maintains the new shape. This is particularly useful, because unlike the prior art devices, the bending can take place at most any reasonable temperature, including ambient temperature, which is convenient. Dependent claim 3, however, makes clear that the bending optionally can take place at a temperature known to be below the glass transition temperature. Clearly, the properties and characteristics of the instantly claimed device are very different from Rosenthal, even as modified by the Examiner, because the Examiner suggests that the Rosenthal device needs to be bent while at a temperature above glass transition.

Another shortcoming of the Examiner's proposal is that the freezing process suggested for the Rosenthal device is for naught because of the need to implant the shaped device into the body of a living being, where the temperature will be even higher than ambient. Thus, any "locking in" of the new shape by freezing will be undone.

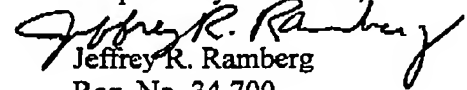
Third, the Examiner's proposal goes well beyond what Rosenthal has in mind. In other words, one skilled in the art would not modify the Rosenthal material as the Examiner contemplates because not only is there no disclosure or suggestion to do so, but such modification would be *contrary* to Rosenthal's teaching. Specifically, Rosenthal teaches a material whose matrix is preferably strong and resilient enough to resist collapse..." See column 4, lines 26-29. As Rosenthal's material is a sponge, this is taken to mean that the sponge material "springs back" to its original size and shape following deformation. Rosenthal neither discloses nor suggests modifying his teachings in the way desired by the Examiner to produce a body that once bent, stays bent.

Accordingly, and for all of these reasons, this rejection should be withdrawn, Applicant respectfully submits.

In view of the above remarks, Applicant respectfully submits that the instant application is in condition for allowance. Accordingly, Applicant respectfully requests issuance of a Notice of Allowance directed to claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52.

Should the Examiner deem that any further action on the part of Applicant would be desirable, the Examiner is invited to telephone Applicant's undersigned representative.

Respectfully submitted,

  
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